

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-00581-RJC-DCK

JOSEPH B. LAMBERT,

Plaintiff,

v.

FIRST TENNESSEE BANK
NATIONAL ASSOCIATION, FIRST
HORIZON HOME LOAN
CORPORATION, FIRST HORIZON
NATIONAL CORPORATION,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
DOES 1–XX, and FIRST HORIZON
BANK,

Defendants.

ORDER

THIS MATTER comes before the Court on Defendants’ motion to dismiss and alternative motion to strike, (Doc. No. 8), and the Magistrate Judge’s Memorandum and Recommendation (“M&R”), (Doc. No. 18).

I. BACKGROUND

On November 12, 2019, Plaintiff filed an amended pro se complaint asserting claims for (1) material misrepresentation and fraud in violation of N.C. Gen. Stat. § 53-244.111(8), 18 U.S.C. § 1341, and 12 C.F.R. § 1014.3; (2) unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1; (3) breach of contract in violation of 12 C.F.R. § 1014.3 and Chapter 25 of the North Carolina General Statutes; (4) violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 and 12 C.F.R. § 1024.36; (5) violation of the Truth in Lending Act, 12 U.S.C. §

1026 et seq. and 15 U.S.C. § 1601 et seq.; (6) taking and conversion in violation of 18 U.S.C. § 641 and N.C. Gen. Stat. § 14-90; (7) unjust enrichment in violation of North Carolina law and 18 U.S.C. § 2259; and (8) emotional distress. On November 26, 2019, Defendants filed their motion to dismiss pursuant to Rule 12(b)(6) and alternative motion to strike for a more definite statement pursuant to Rule 12(e). (Doc. No. 8.) In the M&R, the Magistrate Judge recommended that this Court deny without prejudice Defendants' request to dismiss Plaintiff's amended complaint, grant Defendants' alternative request to strike for a more definite statement, and direct Plaintiff to file a second amended complaint within thirty days. (Doc. No. 18, at 8.) The Magistrate Judge advised the parties of their right to file objections within fourteen days, (Doc. No. 18, at 8); however, no objections were filed, and the time for doing so has expired.

II. STANDARD OF REVIEW

The district court may assign dispositive pretrial matters pending before the court to a magistrate judge for "proposed findings of fact and recommendations." 28 U.S.C. § 636(b)(1)(B). The Federal Magistrate Act provides that a district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1); Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d

310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

III. DISCUSSION

As no objection to the M&R has been made, the parties have waived their right to de novo review of any issues covered in the M&R. After review of the M&R and the entire record, the Court determines that the recommendation of the Magistrate Judge to deny without prejudice Defendants' request to dismiss Plaintiff's amended complaint, grant Defendants' alternative request to strike for a more definite statement, and direct Plaintiff to file a second amended complaint within thirty days is fully consistent with and supported by current law. Therefore, the Court adopts the M&R.

IV. CONCLUSION

IT IS THEREFORE ORDERED that:

1. The Magistrate Judge's M&R, (Doc. No. 18), is **ADOPTED**; and
2. Defendants' motion to dismiss and alternative motion to strike, (Doc. No. 8), is **GRANTED in part** and **DENIED in part**. Defendants' request to dismiss is denied without prejudice, and Defendants' alternative request to strike for a more definite statement is granted. Plaintiff shall file a seconded amended complaint **within thirty (30) days** of the date of this Order.



Robert J. Conrad, Jr.
United States District Judge